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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/712,821	
	Filing Date	November 13, 2000	
	First Named Inventor	Todd M. Kinsella	
	Art Unit	1639	
	Examiner Name	P. Ponnaluri	
Total Number of Pages in This Submission	1	Attorney Docket Number	RGV-003

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	LAHIVE & COCKFIELD, LLP Megan E. Williams - 43,270
Signature	
Date	September 26, 2003

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Dated: September 26, 2003

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In re Patent Application of:
Todd M. Kinsella

Application No.: 09/712,821

Group Art Unit: 1639

Filed: November 13, 2000

Examiner: Ponnaluri, Padmashri

Methods and Compositions for Screening Using
Diphtheria Toxin Constructs

Attorney Docket No.: RGV-003

Mail Stop: Non-Fee Amendment
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CERTIFICATION UNDER 37 CFR 1.10

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September 26, 2003
Date of Signature and of Mail Deposit

By:

Meg E Williams
Megan E. Williams, Esq.
Registration No. 43,270
Attorney for Applicants

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This is in response the Restriction Requirement mailed from the U.S. Patent and Trademark Office on August 26, 2003.

RESTRICTION REQUIREMENT

It is Applicants' position that given the presence of claim 38, which is generic to groups I-II proposed by the examiner a restriction under 35 U.S.C. §121 is improper. As set forth in the previous Response to Restriction Requirement, claim 38 is drawn to an expression vector comprising a first and a second selection gene, wherein the first and second selection gene are fused such that transcription from a promoter operably linked to the first selection gene results in a single transcript encoding the first and second selection genes and further comprising a site which allows for functional separation of the two selection genes, wherein the first selection gene is an HBEGF gene. The presence of this linking claim has not been addressed by the Examiner.

It is Applicant's position that while a species election may be proper among groups I and II originally proposed by the Examiner, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable, an election under 35 U.S.C. §121 is improper since the claims are linked by an allowable generic linking claim. Moreover, Applicant respectfully points out that, contrary to the Examiner's position, ***Groups I and II are disclosed as capable of being used together (see, e.g., claim 25 or 38 and Applicants specification)***. In addition, as Groups I and II are of the same class and subclass, a literature search of both Groups I and II would be nearly, if not completely, co-extensive. Thus, examination of the claims of Groups I and II would not constitute an undue burden to the Examiner.

SPECIES ELECTION

In the restriction requirement set forth in the Office Action mailed August 26, 2003 the Examiner required an election of a single species of each of the following:

- a) a single species between 2a site and CD9 site;
- b) a single species of promoter;
- c) a single species of GFP

Applicant elects Applicant provisionally elects the *2a site*, the *IL-4 ε promoter*, and *Renilla mulleri GFP* for search purposes only. Applicants further elect these elements in the orientation (upstream (5') to downstream (3')): IL-4 ε promoter - HBEGF - 2a - GFP for search purposes only. It is Applicants' understanding that the search will be extended to the remaining species upon a finding of allowability. Currently, claims 13-24, 32-34, and 37-45 are readable on the elected species.

Applicants reiterate that the 2a site and the CD9 site, both of which can be additional components of the expression vector, are not related as species. CD9 is a diphtheria receptor (HBEGF) accessory protein. The 2a site and the IRES site, in contrast, are both species of sites which allows for separation of the two selection genes.

In addition, Applicant reiterates that the term "selection gene" as defined in the specification means a reporter gene that by its presence in a cell (i.e., upon expression) can allow the cell to be distinguished from a cell that does not contain the reporter gene. Therefore, HBEGF, GFP, drug resistance genes, and additional selection genes are all selection genes.

Applicant believes no additional fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 12-0080, under Order No. RGV-003 from which the undersigned is authorized to draw. A duplicate of this sheet is enclosed.

CONCLUSION

If a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,

LAHIVE & COCKFIELD, LLP

By: 

Megan E. Williams, Esq.

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Dated: **September 26, 2003**